

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

MARCUS ORLANDO TATE,	:	
	:	
Petitioner,	:	
	:	
vs.	:	CIVIL ACTION 07-0305-KD-C
	:	
MARC BASS, et al.,	:	
	:	
Respondents.	:	

ORDER

After due and proper consideration of all pleadings in this file, and a *de novo* determination of those portions of the Report and Recommendation to which objection is made, the Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(1)(B) is adopted, as the opinion of this Court, with the following additions:

Plaintiff filed the instant complaint on April 30, 2007 (Doc. 1). Plaintiff was directed to pay the entire \$350.00 filing fee or file a motion to proceed *in forma pauperis*. (Doc. 2) Plaintiff filed a motion to proceed *in forma pauperis* (Doc. 3) which was initially granted. (Doc. 4) Thereafter, the Magistrate Judge issued a Report and Recommendation that plaintiff's complaint be dismissed without prejudice pursuant to 28 U.S.C. §1915(g), along with an order rescinding the order granting plaintiff's motion to proceed *in forma pauperis*. (Docs. 5, 6) Plaintiff filed an objection to the Report and Recommendation on June 14, 2007 and a "Motion for Leave of Court and Amend Court to Correct Errors" on June 18, 2007. (Docs. 7, 8) Simultaneously therewith, plaintiff submitted a partial filing fee of \$2.00. (Doc. 9)

As set out in the Report and Recommendation of the Magistrate Judge, plaintiff's

complaint is governed by 28 U.S.C. §1915(g) since he has previously had three actions which were dismissed on the grounds set forth in that statute. As noted by the Magistrate Judge, plaintiff cannot avail himself of the exception set forth in §1915(g) and did not pay the full \$350.00 filing fee at the time the action was filed. (Doc. 5 at 3) Although the Court initially granted the motion to proceed in forma pauperis, that order was later rescinded when it was determined that plaintiff was subject to the constraints of 28 U.S.C. 1915(g).

Upon consideration of the Report and Recommendation of the Magistrate Judge and the plaintiff's objection thereto, the Court finds that plaintiff's complaint is due to be DISMISSED, without prejudice, pursuant to 28 U.S.C. §1915(g).

DONE this 22nd day of June, 2007.

/s/ Kristi K. DuBose

KRISTI K. DuBOSE

UNITED STATES DISTRICT JUDGE